

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA, In and for the County of Cochise

JUDGE: HONORABLE MICHAEL D. PETERSON
DIVISION: Seven (conducted in Div IV, Sierra Vista)
COURT REPORTER: Van G. Honeman
INTERPRETER:

AMY J. HUNLEY, Clerk of the Superior Court

by: Bonita L. Cook (2/7/2019), Deputy Clerk

HEARING DATE: 02/01/2019

ROGER CONTRERAS,

Petitioner,

VS

NANCY BOURKE,

Respondent.

CASE NO: S0200DO200901390

MINUTE ENTRY: EVIDENTIARY HEARING

HEARING START TIME: 9:00 a.m.

HEARING END TIME: 4:55 a.m.

PRESENT: Petitioner present in person and by Danette R. Pahl, Esq.

Respondent present in person, *pro per*

Joan Sacramento, Esq., present in person as Guardian Ad Litem for the minor child

Prior to commencement of the hearing, Petitioner's Exhibits 1 through 16 were submitted for marking. Respondent's Exhibits A through N were submitted to the clerk for marking. All exhibits were marked for purposes of identification, with the exception Respondent's Exhibit A which was not produced.

This matter came before the Court this date for an Evidentiary Hearing.

The Court addressed the parties and counsel regarding preliminary matters.

With respect to a motion received yesterday from Ms. Neff, the Court inquired of her regarding her intentions. The advised Ms. Neff that as long as she is not recording either video or audio recording, she is welcome to use that and thanked her for letting the Court know in advance.

The Court further inquired if there are any other members of the media present. David Morgan from the Cochise County Record announced himself. The Court stated that the press is welcome in Court, but expressed concerns for the young child in this case. The Court is not inclined to permit dissemination of information regarding the allegations concerning the parents and the young child. Mr. Morgan addressed the Court regarding his intentions.

The Court inquired of Ms. Bourke regarding Rule 13 of the Family Law Rules. Ms. Bourke presented her position.

Ms. Pahl presented Petitioner's position regarding Rule 13 in opposition to the media.

Ms. Neff addressed the Court regarding her intentions and interests in the case.

Ms. Bourke presented her position in support of the hearing be an open hearing. Ms. Bourke also requested that the court reporter be excused due to her inability to pay for the presence of a court reporter. The Court addressed Ms. Bourke regarding the court's reporter's presence here today.

Date: 02/01/2019 Case No.: S0200DO200901390
Minute Entry – Evidentiary Hearing

Ms. Sacramento presented her position in opposition to an opening hearing.

Ms. Bourke further presented her position in support of an open hearing.

The Court noted that under the authority of Rule 13.A, the Court has the power to exclude the public to promote, among other things, amicable settlement of the issues to protect the best interests of a minor child or to protect the parties from physical or emotional harm.

IT IS ORDERED closing the proceedings from now until further notice.

THE RECORD MAY REFLECT that at 9:24 a.m. that all persons seated in the gallery were escorted out of the courtroom with instructions to remain in the foyer until the bailiff calls them back in at the appropriate time to reconsider the issue. The Court also informed Ms. Housler who was on the phone that she would be called back when she is needed to testify.

THE RECORD MAY FURTHER REFLECT that the parties and counsel remained in the courtroom. The proceedings are closed and subject to being reopened.

The Court expressed its thoughts regarding this case and what is best for this young child.

With respect to the status of the current parenting time schedule and Xander's school status, Ms. Bourke and Mr. Contreras presented their respective positions.

Upon inquiry by the Court, Ms. Sacramento reported on her visits with Xander and relayed that Xander is doing very well.

The Court made reference to Rule 1.B of the Family Law Rules and shared its thoughts regarding Xander. The Court perceives that Xander is doing very good.

The Court referenced Rule 63.A.1 and is going to deny the mental health examination request unless someone can prove to the Court that Xander's life will improve by having the parties participate in a Rule 63 evaluation than counseling with Xander.

IT IS ORDERED deferring Petitioner's request for Respondent to submit to a mental health evaluation.

Ms. Pahl presented argument in response.

The Court proposed that Xander and his parents participate in counseling as deemed appropriate by a mutually agreed upon counselor and continue this hearing for a period of 90 days until the parties have participated in counseling.

Ms. Sacramento responded to the Court's proposal.

Ms. Bourke further presented her position regarding the co-parenting counseling.

The Court addressed the parties regarding its concerns and inclinations.

Ms. Pahl stated that Petitioner wants to move forward with the hearing to present evidence regarding the Rule 63 evaluation request.

Date: 02/01/2019 Case No.: S0200DO200901390
Minute Entry – Evidentiary Hearing

Ms. Bourke objected and presented her position in response to the allegations.

The Court further addressed the parties and counsel.

Upon inquiry by the Court, Ms. Bourke stated that she would be in agreement with the Court's proposal for family counseling and to come back in 90 days after the counseling.

Mr. Contreras further presented his position in response to the Court's proposal.

Further discussion was held regarding the issue of counseling.

At 10:25 a.m., Court went off the record.

At 10:34 a.m., Court reconvened with all parties previously announced again present.

THE RECORD MAY REFLECT that the hearing today remains closed at this time.

Ms. Pahl presented the Petitioner's position regarding his willingness to continue the hearing for ninety days to allow the counseling that the Court has suggested.

Ms. Bourke affirmed her position in agreement.

Discussion was held regarding counselors.

Ms. Bourke requested that people be allowed back into the courtroom and presented argument in support thereof.

Ms. Pahl requested that the hearing remain closed and presented argument in opposition.

Mr. Contreras addressed the Court regarding his objections to opening the hearing.

IT IS ORDERED that the hearing is open to the public at this time (10:41 a.m.).

The Court addressed the people who came back into the courtroom regarding the proceedings.

At 10:46 a.m., the Court went off the record for discussion regarding counselors.

At 10:55 a.m., the Court went back on the record with all parties present.

The Court noted that discussion was held off the record to ascertain possible professionals to assist with the counseling; that counseling is envisioned to be conducted by a master's level or above therapist.

The parties are encouraged to attempt to recommend a counselor to be utilized, however, in the event that the parties are not able to make the agreement by 5:00 p.m. on Thursday, February 7, 2019, the Court will pick out a counselor from a list of counselors provided to the Court by the parties.

Discussion was held regarding scheduling for a date to continue this Evidentiary Hearing.

Date: 02/01/2019 Case No.: S0200DO200901390
Minute Entry – Evidentiary Hearing

IT IS ORDERED continuing this **EVIDENTIARY HEARING** to **WEDNESDAY, MAY 8, 2019 at 9:00 a.m. to noon** and then from **1:30 p.m. to 4:30 p.m.** in Division Seven of this Court, in Sierra Vista.

IT IS FURTHER ORDERED setting a **STATUS CONFERENCE** in this matter on **FRIDAY, MARCH 29, 2019** at 9:00 a.m. to 10:00 a.m. (**note that time later changed to 1:45 p.m.**) in Division Seven of this Court, in Sierra Vista. The Judge noted that he may appear personally, but the parties and counselors may appear telephonically if they wish to do so.

With permission of the Court, Ms. Bourke served her motion for child support enforcement on Respondent in open Court.

Ms. Pahl stated that Respondent's Motion to Quash remains pending.

THE RECORD MAY REFLECT that the Court signed the Order to Appear Re: Respondent's Petition to Enforce Child Support Order/Petition for Contempt setting the hearing on **May 8, 2019 at 9:00 a.m.** to coincide with the Evidentiary Hearing currently scheduled on that date. The Order was filed in open Court and copies provided to the parties and counsel this date.

Ms. Bourke requested that she receive actual physical copies of pleadings by mail.

Ms. Pahl had no objection but requested the same in response.

Ms. Sacramento had no objection to receiving documents by just email.

IT IS FURTHER ORDERED that documents between Petitioner and Respondent be provided by regular U.S. Mail and email.

THE RECORD MAY REFLECT that Ms. Pahl presented to Ms. Bourke, in open Court, copies of documents for the modification/legal decision-making trial that were referenced in Respondent's disclosure statement.

Ms. Bourke stated that she will not be able to mail everything by paper without a facilitating attorney's fees/costs award or having her deferral put back in place and presented argument in support thereof.

The Court advised Ms. Bourke that it will not grant that at this time; she will have to come up with the necessary postage to mail copies of documents or evidence out as previously ordered.

Ms. Bourke presented further argument in response regarding the Court's overturning her deferral order and requested a hearing on the issue.

The Court informed Ms. Bourke that she can refile a new request deferral, and the Court will consider it, but the request is **denied** because it is not properly before the Court today.

Ms. Pahl presented argument in support of Petitioner's Request to Preclude Witness Mansour and Notice of Non-Compliance with Court Orders, filed on January 24, 2019.

Ms. Bourke requested the normal response time to the request.

Discussion was held regarding disclosure.

Date: 02/01/2019 Case No.: S0200DO200901390
Minute Entry – Evidentiary Hearing

Ms. Bourke requested that the Petitioner provide the same information to her.

Ms. Pahl presented Respondent's position in response.

The Court addressed the parties about reaching an agreement to provide the same information to each other.

Ms. Bourke further presented argument.

At 11:36 a.m., Court called a brief recess.

At 11:47 a.m., Court reconvened with all previously announced parties again present.

The Court noted that, prior to the break, discussion was held regarding disclosure that was believed to have not been made by both parties. The Court inquired of Ms. Bourke for her position regarding disclosure of her bank statements from the National Bank account.

Ms. Bourke requested that she have the proper response time to the motion.

IT IS ORDERED permitting Ms. Bourke time to respond to the Petitioner's Request to Preclude Witness Mansour and Notice of Non-Compliance with Court Orders, and Ms. Pahl will have the proper time to reply.

IT IS FURTHER ORDERED that Petitioner's Request to Preclude Witness Mansour and Notice of Non-Compliance with Court Orders will be heard at the March 29, 2019 Status Conference hearing.

Discussion was held regarding scheduling.

IT IS FURTHER ORDERED that the **STATUS CONFERENCE on FRIDAY, MARCH 29, 2019** will be changed to **1:45 p.m. to 4:30 p.m.** in Division Seven of this Court.

Ms. Bourke inquired of the Court if she was allowed to file anything further between now and the 29th. The Court informed Ms. Bourke that she could file a specific request for disclosure if she feels she is being denied information that she needs and the Court would allow that, as well as her new request for deferral.

Ms. Pahl addressed the Court regarding the Court's orders that Ms. Bourke execute a HIPPA and that she was to provide a list of medical providers, etc. and she still has not done that.

Upon inquiry by the Court, Ms. Pahl does not anticipate filing anything outside the parameters of emergencies for Xander for discovery related matters. The Court affirmed that applies to both sides.

With respect to the HIPPA release, Ms. Bourke presented her position in response.

Further discussion was held regarding the HIPPA release.

Ms. Pahl further presented Respondent's position.

Date: 02/01/2019 Case No.: S0200DO200901390
Minute Entry – Evidentiary Hearing

Upon inquiry by the Court, Ms. Bourke affirmed that she would be agreeable to providing the HIPPA with the understanding it is provided to the Court directly and that it be further disseminated under seal and under order to Ms. Pahl for purposes of the limited use of these proceedings.

Discussion was held regarding the HIPPA form and modification of the form.

With respect to other filings in this case, the Court can make decisions and orders with oral argument if agreeable to the parties.

The Court requested that Ms. Bourke and Ms. Pahl update the list of pending issues and send it to the Court and each other; the list is to be provided by February 15, 2019 as a formal filing.

Ms. Bourke addressed the Court regarding Petitioner's witness, Ms. Housler, and requested a facilitating order so she can interview her prior to her testimony.

Ms. Pahl presented Petitioner's position in response.

At 12:31 p.m., Court called the noon recess with instructions to reconvene at 1:30 p.m. today.

At 1:34 p.m., Court reconvened with all parties previously announced again present.

Ms. Bourke reviewed the revised HIPPA form and presented her position regarding same. The Court and Ms. Bourke conferred regarding the HIPPA release. The Court added its fax number and email on the form.

Ms. Pahl invoked the rule as to Ms. Mansour's presence in the courtroom. The Court commented that the request is premature at this time.

The Court made a generalized statement regarding non-compliance and contempt issues.

Ms. Bourke requested that she be provided Petitioner's witness list. Ms. Pahl stated that she did provide the list to both Ms. Bourke and Ms. Sacramento. The Court had a copy made and provided it to Ms. Bourke in open Court.

Ms. Bourke addressed the Court regarding the ability to interview Ms. Housler prior to testimony.

Mr. Contreras stated that he paid \$120 to Ms. Housler and for her testimony today. Ms. Pahl summarized the situation.

The parties and Ms. Sacramento continued to present their respective positions regarding the interview with Ms. Housler.

IT IS ORDERED that Petitioner is to pay \$120 to Ms. Housler to facilitate a conversation with Ms. Bourke.

Ms. Pahl stated that Mr. Contreras already paid \$120 for the session that Ms. Bourke cancelled.

Ms. Bourke further addressed the Court regarding Petitioner's witness list.

Ms. Pahl stated that she is cutting Sgt. Morton, Sgt. Reidy, and Mary Jane Abril from Petitioner's witness list. Ms. Bourke was provided a copy of the return of service for Mr. Cuffe in open Court.

Date: 02/01/2019 Case No.: S0200DO200901390
Minute Entry – Evidentiary Hearing

Ms. Pahl requested that an order that the subpoenas that were previously issued remain in full force and effect for the continued date of the hearing.

IT IS ORDERED that all subpoenas will remain in full force and effect.

Ms. Bourke further addressed the Court regarding Petitioner's proposed witnesses Officer Grady and Officer Lamay. Ms. Pahl stated those witnesses would be called at the time of the legal decision-making trial. Ms. Bourke requested copies of the return of service in sufficient time for both of those witnesses so she can set up an interview.

Ms. Bourke asked if Roy Contreras would be willing to do a pretrial interview. Ms. Pahl affirmed that he would for the trial.

For the May 8th hearing, Ms. Bourke stated that she anticipates calling Brooke Mansour, Toni Mott, Rebecca Mott, Virgil Bandy, Cindy Sproule, and Melanie Mosier. Ms. Pahl anticipates calling Ms. Housler, Mr. Cuffe, and Roger Contreras.

Ms. Pahl made a statement regarding Respondent's list of witnesses in that it does not comply with the rule and does not state the substances of their testimony.

Ms. Bourke gave a summary of testimony that she anticipates of her proposed witnesses.

Ms. Pahl presented her position with respect to the Income Withholding Order.

Ms. Pahl served Ms. Mansour in open Court. Ms. Pahl requested that the HIPPA forms be re-executed to have any information disclosed to the Court; same would be true for her client regarding HIPPA forms.

Ms. Pahl addressed the Court regarding Respondent's postings on Facebook and requested that the posts be taken down.

Ms. Bourke presented her position in response.

Ms. Pahl presented argument in response and moved for the admission of Petitioner's Exhibit 14.

THE RECORD MAY REFLECT that Petitioner's Exhibit 14 was admitted in evidence. The Court reviewed Exhibit 14.

IT IS ORDERED neither party shall make any public posts, Facebook, group chat, social media, internet, or in any other forum in connection with this case. The Court's concern is the best interests of the young child in this case.

Ms. Pahl requested that the post be removed. The Court **ordered** that the posts be taken down.

Ms. Pahl requested that it apply to Ms. Bourke seeking out media attention. The Court **denied** the request.

The Court **affirmed** its prior orders that the parties not make disparaging remarks about each other.

Ms. Bourke requested that Mr. Contreras be ordered to pay his child support.

The Court **denied** the request and stated that issue would be addressed at the May 8th hearing.

Ms. Bourke further addressed the Court regarding the child support order and her inability to obtain a certified copy.

Date: 02/01/2019 Case No.: S0200DO200901390
Minute Entry – Evidentiary Hearing

Ms. Pahl presented the Petitioner's position.

The Court will review the file and consider the evidence.

Mr. Pahl requested clarification that the posts on social media are to be taken down and procedures regarding new HIPPA releases.

The Court confirmed that the same orders are applied to Petitioner regarding the HIPPA release and social media issues.

Ms. Sacramento stated that the only witness would be the therapist who is selected by the parties so she could report to the Court regarding progress and the best interests of Xander. Ms. Sacramento also requested that the parties be able to attend school functions and games, etc. that Xander would be participating in and that they treat each other with respect, including no acronyms being used in emails, etc.

The Court addressed Petitioner and Respondent and requested that they move forward in a positive for Xander.

Ms. Bourke presented her position in response.

Further discussion was held regarding Xander's activities and keeping each other informed about Xander's activities.

Mr. Contreras presented his position regarding information provided to Ms. Bourke.

Ms. Bourke requested a firm disclosure deadlines and firm rebuttal disclosure deadlines.

If there are disclosure issues remaining, it will be taken up at the at the March 29th status hearing.

Ms. Bourke requested that she receive paper copies of the Petitioner's exhibits.

Ms. Pahl stated that she will provide paper copies of the exhibits and asked the same of Ms. Bourke in return.

IT IS ORDERED directing each party to make copies of their exhibits and exchange those copies with the other party and Ms. Sacramento by next Friday (would be February 8, 2019).

Ms. Pahl requested that the counselor may appear telephonically at the time of any future hearings if necessary.

The Court approved Ms. Pahl's request. The Court is hoping that on the 29th of March, the counselor can give a report on the progress.

Ms. Pahl clarified the Court's order with regarding disclosure of the counseling records to everyone and telephonic appearance.

IT IS SO ORDERED.

Ms. Sacramento requested permission to contact the parties to make arrangements to see Xander again.

At 3:47 p.m., Court adjourned.

Date: 02/01/2019 Case No.: S0200DO200901390
Minute Entry – Evidentiary Hearing

After Court adjourned, there was no court reporter present and courtroom clerk with FTR on, the Court and parties discussed issues concerning the HIPPA forms. It was determined that Ms. Bourke will sign the form today and provide Petitioner with names of medical providers including mental health providers utilized over the past three years by next Friday.

At 4:08 p.m., Court reconvened on the record with all previously announced parties again present, with the exception of Ms. Sacramento.

Ms. Pahl requested that Ms. Bourke also execute a HIPPA release with regard to pharmacy where she has her prescription medications filled.

Ms. Bourke presented her position in response.

IT IS ORDERED that both parties shall execute HIPPA releases for and including pharmacy providers, as well as any medical provider or mental health provider to be construed broadly.

The Court will remain in the courtroom until the issue is resolved.

Further discussion was held regarding revisions to be made to the HIPPA forms.

Ms. Bourke further addressed the Court regarding her documented time on this case and inquiring if she would be able to file that under seal. The Court responded that it is not considering any further requests at this time.

Ms. Bourke made a statement regarding her marital records and that she will do whatever the Court orders.

Ms. Pahl stated they will also try to get a HIPPA release from Mr. Swartz as it pertains to the marital records.

Ms. Bourke inquired of the Court if it is willing to state on the record what the relevancy would be of her marital counseling records and gynecological records.

The Court reiterated that it ordered that there be disclosure made which is foundationally different than admission into evidence. The Court **denied** Ms. Bourke's request for an *ex parte* order.

Ms. Bourke expressed her concerns regarding Petitioner's need for the requests of those certain records being requested.

The Court further addressed Ms. Bourke's concerns.

Ms. Pahl announced that she is providing to Ms. Bourke with Petitioner's signed HIPPA releases.

At 4:55 p.m., Court adjourned.

xc: mailed/distributed by: blc date: 2/7/19

Attorney for Petitioner: Danette R. Pahl, Esq., 6400 East Tanque Verde Road, Suite, 150, Tucson, AZ 85715

Respondent: Nancy Bourke, Esq., 5585 Los Capanos Drive, Sierra Vista, AZ 85635

DIV VII JAA Court Administration